

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

Docket No. 237,773

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge John D. Clark dated November 5, 1998, wherein claimant was granted benefits in the form of medical treatment with Chris Miller, M.D., and temporary total disability compensation if taken off work.

ISSUES

Did claimant suffer accidental injury, arising out of and in the course of her employment on the date alleged, to her right knee?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant alleges accidental injury on September 3, 1998, when, as she was exiting the break room door, another company employee began to enter the break room through the same door. Claimant moved to get out of the way of the opening door, fearing injury to her knee. The sudden motion caused claimant to injure her patella tendon.

Respondent argues claimant's knee problem is not related to her employment as claimant had suffered a nonwork-related knee injury in August 1998. She underwent surgery on August 6, 1998, including a right knee scope with chondroplasty. Claimant was in the recovery phase of her surgery when the second injury on September 3, 1998, occurred.

Claimant has the burden of proving that her injury arose out of and in the course of her employment. K.S.A. 1998 Supp. 44-508(f). Respondent acknowledges that claimant was at work in the break room at the time the injury occurred, and, therefore, claimant has proven that her injury arose “in the course” of her employment. But respondent contends claimant’s activities in the break room do not constitute duties of her employment with respondent. Respondent argues that claimant has failed to prove that the injury arose “out of” her employment.

The phrase “out of” employment points to the cause or the origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises “out of” employment where there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises “out of” employment if it arises out of the nature, conditions, obligations, and incidents of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The Appeals Board has held that compensation will be denied where a claimant’s intervening nonwork-related activities, after a work-related accident, were of a nature which would tend to aggravate a claimant’s condition. Dittmer v. First Class Ford Mercury, Docket No. 199,160 (July 1997).

In workers’ compensation litigation, the converse is also true. A nonwork-related, preexisting condition can be aggravated by a claimant’s work activities. In this instance, while claimant may not have been at her desk performing labors, she was, however, involved in her employment. The use of the break room, supplied by respondent, is an activity which would be considered a portion of the employment benefit provided to the claimant and the other employees, and would generally fall under the Personal Comfort Doctrine so as to be compensable. Larson’s Workers’ Compensation Law § 21.10 (1996).

The medical evidence from Dr. Chris Miller, claimant’s treating physician, states unequivocally that this was a reinjury of claimant’s preexisting condition, and that the injury occurred at work on September 3, 1998. Dr. Miller went on to state in his October 12, 1998, office note that claimant’s extension was fine before the incident, but that after the incident, claimant had sustained specific damage to the patella tendon mechanism, which had a definite negative effect on her ability to extend the knee.

Even though, as respondent argues, the break room door did not make contact with claimant’s knee at any time, Dr. Miller acknowledges that the forceful hyperextending of the knee when she jerked back would be sufficient to cause the damage diagnosed.

The Appeals Board, therefore, finds, for preliminary hearing purposes, that the Order of Administrative Law Judge John D. Clark dated November 5, 1998, granting claimant benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated November 5, 1998, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December, 1998.

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Jeff S. Bloskey, Overland Park, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director